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July 20, 2016

Jocelyn G. Boyd, Esquire
Chief Clerk
South Carolina Public Service Commission
101 Executive Center Drive
Suite 100
Columbia, South Carolina 29210

RE: Proposed Order and Post-Hearing Brief of South Carolina Net, Inc. d/b/a
Spirit Communications
Docket No. 2016-79-C

Dear Ms. Boyd,

Please find enclosed the Proposed Order and Post-Hearing Brief of South Carolina Net, Inc. d/b/a Spirit Communications in the above-referenced docket, which were filed with the South Carolina Public Service Commission today via E-Filing.

Please contact the undersigned counsel if you have any questions.

Sincerely,



Carrie L. DeVier

*Counsel for South Carolina Net, Inc. d/b/a
Spirit Communications*

Enclosures

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In Re: Complaint and Petition for Relief)	
Of South Carolina Net, Inc. d/b/a Spirit)	
Communications v. BellSouth)	Docket No. 2016-79-C
Telecommunications, LLC d/b/a AT&T)	
South Carolina)	

SPIRIT COMMUNICATIONS’ PROPOSED ORDER

On February 19, 2016, South Carolina Net, Inc. d/b/a Spirit Communications (“Spirit”) filed with the South Carolina Public Service Commission (the “Commission”) a Complaint and Petition for Relief (“Complaint”) against BellSouth Telecommunications, LLC d/b/a AT&T Georgia, AT&T North Carolina, and AT&T South Carolina by AT&T Services, Inc. (collectively, “AT&T”) (collectively, “Spirit” and “AT&T” are the “Parties”), as amended,¹ alleging breach of the Parties’ interconnection agreement (the “ICA”). Spirit alleges that AT&T has breached the ICA by (1) refusing to disconnect E911 trunks, and (2) continuing to charge for E911 trunks that Spirit requested be disconnected.² Spirit seeks various remedies for these alleged breaches, as discussed herein. AT&T answered the Complaint on March 23, 2016.

¹ BellSouth Telecommunications, LLC filed a Motion to Strike the names of AT&T Georgia and AT&T North Carolina from the caption of this proceeding on March 23, 2016. Spirit did not object to that motion and the Hearing Officer assigned to this proceeding issued a Hearing Officer Directive granting the motion as submitted. *See* Complaint and Petition for Relief of South Carolina Net, Incorporated d/b/a Spirit Communications v. BellSouth Telecommunications, LLC d/b/a AT&T Georgia, AT&T North Carolina and AT&T South Carolina, Docket No. 2016-79-C, Order No. 2016-41-H (Apr. 21, 2016).

² AT&T has emphasized that AT&T does not charge for E911 trunks, but Spirit has made equally clear in testimony that AT&T will not disconnect the E911 interconnection facilities for which AT&T has stated that charges are assessed, until all E911 trunks are removed from the E911 interconnection facilities through re-homing the E911 trunks. *See* Tr. 47, 135, 146, 174,

On May 19, 2016, the Commission held an evidentiary hearing on Spirit's Complaint. Spirit was represented by Carrie L. DeVier, Esq., and Robin E. Tuttle, Esq. AT&T was represented by Lee E. Dixon, Esq., J. Tyson Covey, Esq., and Thomas M. Payne, III, Esq. The South Carolina Office of Regulatory Staff ("ORS") was represented by Jeffrey M. Nelson, Esq. Spirit presented the testimony of Michael D. Baldwin and James Steven Covington. AT&T presented the testimony of J. Scott McPhee and Carl Albright, Jr. The ORS did not present a witness.

On July 20, 2016, the parties submitted post-hearing Briefs and Proposed Orders. We have carefully reviewed these submissions, the evidence of record, and the controlling law, and this Order sets forth our rulings.

I. FINDINGS OF FACT

1. Where an entity has been selected by a Public Service Answering Point ("PSAP") to route 911 calls and to forward associated Automatic Number Identification ("ANI") and Automatic Location Identification ("ALI") to the PSAP (collectively, the routing of 911 calls and forwarding of associated ANI and ALI is the "E911 Service" that is ordered and purchased by the PSAP and/or E911 Customer³), that entity becomes the E911 Service Provider. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Sections 1.2 and 2.8).

2. An E911 Service Provider has an obligation to provide all telecommunications carriers that have been approved by the PSAP and/or E911 Customer it serves with access to the

176, 186, and 202-203. Despite AT&T's claims to the contrary, AT&T has tied E911 interconnection facilities that AT&T provides to the E911 trunks such that termination of the use of E911 interconnection facilities provided by AT&T, as permitted by the ICA, and thus termination of charges assessed by AT&T for E911 interconnection facilities, are dependent on termination of the E911 trunks.

³ An E911 Customer is the governmental entity authorized to respond to public emergency telephone calls. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 2.7).

E911 Service Provider's selective router that routes the 911 calls to the appropriate PSAP, as well as to transport the 911 calls and forward associated ANI and ALI to that PSAP. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 1.1).

3. AT&T is an E911 Service Provider in certain areas of South Carolina where Spirit has interconnected its network with AT&T's network. *See* Tr. 139.

4. AT&T only provides E911 Service where AT&T is the E911 network provider (or E911 Service Provider) and where that service configuration is purchased by the E911 Customer and/or PSAP. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Sections 1.2 and 2.8).

5. Where AT&T is an E911 Service Provider, Section 251 of the Telecommunications Act of 1996 (the "Act") requires AT&T to provide Spirit with access to AT&T's 911 and E911 databases and to provide Spirit with interconnection and call routing for purposes of 911 call completion to a PSAP. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 1.1).

6. Spirit has an independent obligation to provide its customers with 911 service. *See* Tr. 121; *see also* 47 U.S.C. § 64.3001.

7. Spirit and AT&T entered into the ICA on June 11, 2012. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, General Terms and Conditions at p. 56).

8. The Parties entered into the ICA to establish their respective obligations and the terms and conditions under which they interconnect their networks and facilities and provide each other services as required by the Act. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, General Terms and Conditions at p. 3).

9. The Parties continue to operate under the terms of the ICA. *See* Tr. 201.

10. The ICA identifies several ancillary services available for use and purchase by Spirit from AT&T. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.1.2).

11. E911 is one of the ancillary services that Spirit may use and purchase from AT&T under the ICA. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.1.2).

12. The ICA identifies that there are required trunk groups and optional trunk groups, referencing several types of services including E911. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 1.1.2).

13. The network interconnection provisions in Attachment 2 of the ICA identify Attachment 5 of ICA as providing the terms and conditions on which Spirit may use and purchase such ancillary E911 services. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.3.8.1).

14. The services offered in Attachment 5 of the ICA include E911 interconnection facilities from Spirit's switch to AT&T's selective routers and the provisioning of circuits on those facilities to be connected to the E911 trunks that AT&T provides and maintains between its selective routers and the PSAP (collectively, the "E911 Access Services"). *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Sections 3.3.2, 4.2.3, 4.2.5, and 4.2.6).

15. The ICA does not require carriers that are interconnecting their networks pursuant to the Attachment 2 provisions to purchase ancillary E911 Access Services from AT&T. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Sections 4.1.2 and 4.3.8).

16. The ICA states that AT&T's provision of access to its E911 Selective Routers and E911 Database Management System is by mutual agreement between the Parties. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 1.2).

17. The ICA states that AT&T only provides access to its E911 Selective Routers for Spirit's own switches. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 1.3).

18. For E911 Access Services purchased from AT&T, the ICA states that AT&T will provide facilities to interconnect Spirit to the AT&T E911 selective routers, but that Spirit has the option to provide its own interconnection facilities or to use interconnection facilities from another provider. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 3.3.2).

19. For E911 Access Services purchased from AT&T, the ICA states that Spirit is financially responsible for the transport facilities. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 4.2.1).

20. For E911 Access Services purchased from AT&T, the ICA states that Spirit shall order a minimum of two (2) one-way outgoing E911 trunks dedicated for originating 911 emergency service calls for each PSAP to interconnect to the AT&T selective router. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 4.2.3).

21. For E911 Access Services purchased from AT&T, the ICA requires Spirit to order sufficient trunking to route originating 911 calls to the AT&T Selective Routers. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 4.2.6).

22. For E911 Access Services purchased from AT&T, the ICA states that Spirit is responsible for determining the proper quantity of trunks and transport facilities from its switches to interconnect with the AT&T Selective Routers. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 4.2.8).

23. Spirit previously ordered and purchased from AT&T the optional, ancillary E911 Access Services, including E911 interconnection facilities and E911 trunks, for a period of time after entering into the ICA with AT&T. *See* Tr. 25.

24. Subsequent to the Parties entering into the ICA, the Federal Communications Commission began requiring interconnected Voice over Internet Protocol (“VoIP”) providers to update the addresses of their customers if their customers change their location of their VoIP phones. *See* Tr. 99 and 119-120.

25. AT&T is not able to provide such services to Spirit. *See* Tr. 99 and 119-120.

26. Bandwidth is able to provide such services to Spirit. *See* Tr. 63-64 and 119-120.

27. South Carolina Telecommunications Group Holdings, LLC (which is an affiliate of Spirit) entered into a Master Service Agreement with Bandwidth.com, Inc. (“Bandwidth”), dated September 27, 2013 (the “MSA”), including the 911-Terms and Conditions supplementing the MSA, pursuant to which Bandwidth provides certain 911 services to Spirit. *See* Tr. 27.

28. In late 2013, Spirit submitted multiple Access Service Requests (“ASRs”) to AT&T that requested AT&T to disconnect E911 trunks and interconnection facilities that Spirit had previously ordered from AT&T. *See* Tr. 29 and 40; *see also* Tr. 122 (Hearing Exhibit 2, McPhee Direct, Attachment B).

29. AT&T rejected Spirit’s requests to disconnect E911 trunks. *See* Tr. 54, 71, and 78; *see also* Tr. 122 (Hearing Exhibit 2, McPhee Direct, Attachment B).

30. AT&T has stated that it will not disconnect E911 interconnection facilities until all E911 trunks have been removed from the E911 interconnection facilities. *See* Tr. 47, 174, 176, 186, and 202-203.

31. AT&T has not disconnected any of the E911 trunks or E911 interconnection facilities that Spirit requested be disconnected. *See* Tr. 29.

32. Spirit is not sending any 911 traffic to AT&T's selective routers over the existing E911 interconnection facilities and E911 trunks that Spirit has in place with AT&T and that Spirit requested be disconnected. *See* Tr. 45, 92, and 122.

33. Spirit has not sent any 911 traffic to AT&T's Selective Routers over the existing E911 interconnection facilities and E911 trunks that Spirit has in place with AT&T and that Spirit requested be disconnected since the end of 2013. *See* Tr. 29, 45, 92, and 122.

34. AT&T continues to bill Spirit in the approximate amount of \$4,953.59 per month for the E911 interconnection facilities on which E911 trunks remain, and which facilities and trunks Spirit has requested be disconnected. *See* Tr. 21, 30, and 33.

35. Spirit has disputed AT&T's charges for E911 Access Services since late 2013 and has not paid AT&T for the optional E911 Access Services. *See* Tr. 200-201.

II. CONCLUSIONS OF LAW

1. Where AT&T is an E911 Service Provider and has interconnected with Spirit, AT&T has an obligation pursuant to Section 251 of the Act to provide Spirit with access to AT&T's 911 and E911 databases and to provide Spirit with interconnection and call routing for purposes of 911 call completion to a PSAP.

2. E911 Access Services are ancillary services under the ICA, and Spirit's use of AT&T's E911 Access Services, including E911 trunks, is optional.

3. AT&T has materially breached the ICA by: 1) refusing to disconnect E911 trunks and E911 interconnection facilities that are optional and ancillary E911 Access Services; and 2) continuing to bill Spirit for the optional, ancillary E911 Access Services.

4. AT&T is required to disconnect the E911 trunks and E911 interconnection facilities as requested by Spirit.

5. AT&T is required to reverse all charges for all E911 Access Services that were billed to Spirit since the date on which Spirit initially requested disconnection of the first E911 trunk, and to stop billing Spirit for E911 Access Services going forward.

III. DISCUSSION

A. SPIRIT'S E911 OBLIGATIONS

As a telecommunications carrier, Spirit has an independent obligation to “transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority.”⁴ *See* Tr. 121. The Commission’s initial grant of authority for Spirit to provide local exchange services and exchange access services was in part based on compliance with certain criteria, including the South Carolina Code of Laws, Title 23, Chapter 47, regarding 911 service.⁵ Based on federal and state requirements, Spirit must arrange to have all 911 calls from its customers sent to the PSAPs across the state where Spirit offers service. Spirit acknowledges its obligation to transmit 911 calls to PSAPs and that this obligation is unrelated to the terms and conditions in any interconnection agreements it has with carriers that are also E911 Service Providers. *See* Tr. 121. Spirit transmits 911 calls to PSAPs by routing 911 traffic to the appropriate selective routers that serve the PSAPs where Spirit provides local service. *See* Tr. 61

⁴ 47 U.S.C. § 64.3001.

⁵ *See Application of South Carolina Net, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services in Certain Areas of South Carolina Currently Served by BellSouth Telecommunications, Inc. GTE South, Inc. and United Telephone Company of the Carolinas, Inc., Order Approving Expedited Review Granting Certificate to Provide Local Exchange Services and Approving Flexible Regulation, Docket No. 2000-0121-C, Order No. 2000-549, July 5, 2000, at p. 10.* The Commission directed Spirit to contact the appropriate 911 service authorities before operating and providing local service. *See id.*

and 67. At the selective routers, the E911 Service Provider routes the 911 calls to the appropriate PSAPs. *See* Tr. 61 and 67. Today, Spirit transmits 911 calls to PSAPs using the services of Bandwidth, which transports these calls to the selective routers of various E911 Service Providers across the state, including to the selective routers of AT&T where it is the E911 Service Provider. *See* Tr. 71-72. Spirit is meeting its obligations to provide 911 service to its customers by transmitting their 911 calls to the appropriate PSAPs.

B. AT&T'S E911 OBLIGATIONS

When a PSAP selects an entity to provide the PSAP with necessary components of E911 Service, that entity becomes the E911 Service Provider and has an obligation to provide interconnecting carriers with access to the 911 and E911 databases and to provide interconnection and call routing for purposes of 911 call completion to the PSAP as required by Section 251 of the Act. *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 5, Section 1.1); *see also* Tr. 139. When AT&T is the E911 Service Provider, its obligations, as described in Attachment 5 of the ICA, are to provide and maintain equipment at the E911 selective router and the database management system so as to provide interconnecting carriers, such as Spirit, with nondiscriminatory access to E911 Service. *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 5, Section 3.1). Meeting this obligation requires AT&T to provide and maintain E911 trunks between AT&T's E911 selective routers and the PSAPs of the E911 Customer and to route 911 calls to the PSAPs, among other responsibilities. *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 5, Sections 3.2, 3.3, 3.4, and 2.8).

Where AT&T is the E911 Service Provider, all carriers providing local service in that area must send 911 calls to the AT&T selective routers for further routing to the appropriate PSAPs. Without access to AT&T's E911 Service Provider's selective routers and the routing

services to the PSAPs, other local service providers in that area would not be able to meet their independent obligation to provide 911 service to their customers.

Fulfillment of AT&T's obligations as an E911 Service Provider does not require Spirit and other interconnecting carriers to use either the E911 interconnection facilities or the E911 trunks offered in Attachment 5 as the means for accessing AT&T's E911 selective routers and thereby the PSAPs. However, AT&T admits that it has assumed this additional responsibility and made use and purchase of the E911 interconnection facilities and E911 trunks offered in Attachment 5 a requirement, contrary to the optional nature of these services as set forth in Attachment 2. Specifically, AT&T has claimed that the Attachment 5 "contract provisions were agreed to and put in place to ensure, from a safety and reliability perspective, the proper handling of 911 calls. ... In sum, it is AT&T's position that from a contract, safety, and network reliability perspective, Spirit has an obligation to maintain dedicated trunks from its switch to AT&T's selective router." Tr. 9 (Hearing Exhibit 1, Exhibit MDB-5). Indeed, AT&T has made clear that even if Spirit sought to negotiate a successor interconnection agreement with AT&T, revisions to the 911 call routing provisions in Attachment 5 would need to be arbitrated because "there would be a number of technical, public safety, policy, and legal issues that would need to be addressed." Tr. 9 (Hearing Exhibit 1, Exhibit MDB-6). AT&T has effectively made use and purchase of the E911 interconnection facilities and E911 trunks in Attachment 5 a prerequisite for any competitor to provide local service.

C. E911 ACCESS SERVICES OFFERED UNDER THE ICA

All telecommunications carriers have an obligation to provide 911 service to their customers by transmitting their 911 calls to a PSAP. All entities that have been selected as an E911 Service Provider have an obligation to provide other local service providers with access to

their selective routers and routing to PSAPs. The question before the Commission in this breach of contract complaint is whether the Parties' ICA requires Spirit to use and purchase the E911 Access Services set forth in Attachment 5.⁶

The starting point in deciding this matter must be with the language in Attachment 2 (ISP – Network Interconnection) of the ICA. Section 1.1 of Attachment 2 of the ICA states that the “Attachment sets forth terms and conditions for Network Interconnection, Trunking and Intercarrier Compensation for AT&T 22-STATE and CLEC.” *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 2, Section 1.1). AT&T made clear that the ICA entered into by Spirit was AT&T's standard template agreement that was not altered by negotiation. *See* Tr. 138-139 and 197. AT&T's standard interconnection and trunking provisions identify certain services as ancillary, notably Operator Services/Directory Assistance (“OS/DA”), Busy Line Verification (“BLVI”), High Volume Call In, and E911. *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 2, Section 4.1.2). AT&T has not disputed that E911 Access Services are ancillary and that ancillary services are supplementary services that a competitive local exchange carrier (“CLEC”) has the option to purchase. *See* Tr. 43 and 52. Consistent with the optional nature of ancillary services, Section 4.1.2 of Attachment 2 uses permissive, not mandatory, language when referring to interconnection trunking to be used for these services. Specifically, Section 4.1.2 states “Trunk groups for ancillary services (e.g., OS/DA, BLVI, High Volume Call In and E911) and Meet Point or Third Party (as appropriate) Trunks Groups *can be* established between CLEC's switch and the appropriate AT&T-22STATE Tandem Switch as further provided in this Section 4.0.”

⁶ The Commission notes that, by its terms, the ICA expired on July 18, 2015, *see* Tr. 87, 125, and 201, and that there is no evergreen provision in the ICA for automatic renewal. *See* Tr. 9 (Hearing Exhibit 1, ICA, General Terms and Conditions, Section 8.0). However, the Parties have continued to operate under the ICA since its expiration and have not attempted to negotiate a new interconnection agreement for the provision of E911 Access Services. *See* Tr. 87 and 201.

See Tr. 9 (Hearing Exhibit 1, ICA, Attachment 2, Section 4.1.2) (emphasis added). Importantly, the ICA makes clear that there are required trunk groups and optional trunk groups depending on the service involved. *See* Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 1.1.2).

If a CLEC chooses to purchase any of the ancillary services identified in Attachment 2 of the ICA, the terms and conditions for these ancillary services are included elsewhere in the ICA, notably in Attachment 5 for E911 Service and Attachment 6 for OS/DA services.⁷ *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 5 and Attachment 6). Section 4.3.8.1 of Attachment 2 specifies that the terms and conditions for E911 trunk groups are included in Attachment 5. *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 2, Section 4.3.8.1). Section 4.3.9 of Attachment 2 sets forth the terms and conditions for High Volume Call In. *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 2, Section 4.3.9). Section 4.3.10.1 of Attachment 2 specifies that the terms and conditions for OS/DA trunk groups, which also includes BLVI trunk groups, are included in Attachment 6. *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 2, Section 4.3.10.1).

If a CLEC chooses to purchase any of the ancillary services identified in Attachment 2, the terms and conditions for the trunking requirements for these ancillary services are mandatory provisions, not permissive. Specifically, the ICA uses mandatory terms such as “shall establish,” “must establish,” and “shall order” for the trunking provisions included in the terms and conditions of the optional ancillary services if and when they are purchased. *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 6, Sections 3.3.6.1.1 and 3.3.6.2.1; Attachment 2, Section 4.3.9.1; and Attachment 5, Sections 4.2.3 and 4.2.6).

⁷ The Commission notes that Spirit does not purchase, and has never purchased, the ancillary OS/DA services offered pursuant to Attachment 6 of the ICA. *See* Tr. 42-44, 77, 115, and 121-122.

AT&T asserts that Spirit must obtain the E911 services from AT&T, relying only on the mandatory trunk ordering provisions in Attachment 5. *See* Tr. 145. However, this reliance on the trunk ordering provisions of Attachment 5 is misplaced and would render AT&T's identification of E911 Access Services as an ancillary, optional service in Attachment 2 meaningless. While provisions in Attachment 6 suggest a CLEC may choose to purchase OS/DA service, *See* Tr. 9 (Hearing Exhibit 1, ICA, Attachment 6, Sections 3.3.3.2 and 4.1.1), the lack of similar language in Attachment 5 does not negate the optional nature of the ancillary E911 Access Services as set forth in Attachment 2. Indeed, the inclusion of additional optional language for the OS/DA services set forth in Attachment 6 is more likely explained by the fact that a CLEC has many choices for providers of OS/DA services, but a CLEC does not have any choice in the ultimate provider of the E911 Service, which is selected by the PSAP. Ultimately, a CLEC must access the selective routers of the E911 Service Provider that has been selected by the PSAP to provide the E911 Service.

Where a PSAP has chosen AT&T to provide E911 Service, AT&T must provide CLECs with access to AT&T's E911 selective routers and transport of 911 calls from the E911 selective routers to the PSAP. However, the question we must decide is whether the ICA requires Spirit to use the E911 Access Services included in Attachment 5 in order to reach AT&T's E911 selective routers. Looking only at the mandatory trunking requirements in Attachment 5 of the ICA would render meaningless the identification of E911 Access Services in Attachment 2 as ancillary services that are optional, as well as the permissive language in Section 4.1.2 of Attachment 2 that "trunk groups for ancillary services ... *can be* established." Tr. 9 (Hearing Exhibit 1, ICA, Attachment 2, Section 4.1.2).

The language in Section 4.1.2 of Attachment 2 is the determining factor for the question before us. E911 Access Services are ancillary services; they are optional services. Spirit is not required to order, use, or purchase the E911 interconnection services or the E911 trunking services provided for in Attachment 5 in order to gain access to AT&T's selective routers. The introductory provisions of Attachment 5 confirm that Spirit has a choice of whether or not to use the E911 interconnection and E911 trunking services included in Attachment 5. Specifically, Section 1.2 of Attachment 5 states that "[a]ccess to AT&T-22-STATE's E911 Selective Routers and E911 Database Management System will be by mutual agreement between the Parties." Tr. 9 (Hearing Exhibit 1, ICA, Attachment 5, Section 1.2). Nothing in Attachment 5 prevents Spirit from terminating its use of either the E911 interconnection facilities or the E911 trunks offered in Attachment 5. Accordingly, Spirit may choose to access AT&T's E911 selective routers by another means if available.⁸

D. BREACH OF INTERCONNECTION AGREEMENT

After entering into the ICA, initially Spirit chose to use the E911 interconnection facilities and E911 trunks offered by AT&T in Attachment 5. *See* Tr. 25. After using the services offered in Attachment 5 for approximately a year, Spirit determined that it would be more cost effective and efficient from a network perspective to use the services of a third party in order to access AT&T's E911 selective routers. *See* Tr. 29, 40. Spirit contracted with Bandwidth to provide it with access to AT&T's E911 selective routers and, after the appropriate connections had been established and tested, Spirit began issuing ASRs to disconnect the E911 trunks and E911 interconnection facilities that it had previously ordered under Attachment 5 of the ICA. *See* Tr. 29, 44-45, 53, and 59-62. AT&T has refused to disconnect the E911 trunks as requested by

⁸ As noted in other sections of this Order, Spirit has exercised its option to use another means to access AT&T's selective routers through its arrangement with Bandwidth.

Spirit. *See* Tr. 54, 71, and 78; *see also* Tr. 122 (Hearing Exhibit 2, McPhee Direct, Attachment B). AT&T continues to bill Spirit for E911 interconnection facilities because the E911 trunks originally provisioned on those E911 interconnection facilities have not been disconnected. *See* Tr. 21, 30, 33. AT&T has breached the ICA by refusing to disconnect the E911 trunks and E911 interconnection facilities that Spirit ordered under Attachment 5 as optional, ancillary services. AT&T has breached the ICA by continuing to charge Spirit for the E911 interconnection facilities that remain in place because AT&T will not disconnect the E911 trunks provisioned on those facilities.

Spirit ceased paying AT&T for the E911 interconnection facilities in early 2014. *See* Tr. 200-201. Even though Spirit has not paid for the E911 interconnection facilities for over two years, AT&T has not pursued any effort to recoup charges assessed for E911 interconnection facilities. *See* Tr. 200-201.

Spirit has not sent any 911 traffic over the AT&T E911 interconnection facilities and E911 trunks ordered under Attachment 5 for over two years, but rather Spirit has been sending 911 calls to AT&T's selective routers using the services of Bandwidth during that timeframe. *See* Tr. 29, 44-45, 53, and 59-62. There have been no reported technical or public safety issues with 911 calls from Spirit's customers being routed over the connection established by Bandwidth to AT&T's selective routers. *See* Tr. 67-68.

IV. CONCLUSION

As remedies for AT&T's breaches of the ICA, and to prevent further harm from continued breaches, the Commission makes the following findings and grants the following relief, specifically we:

- (a) Find that the E911 Access Services offered in Attachment 5 of the ICA are ancillary services that Spirit may choose to use and purchase and that Spirit may choose to discontinue at any time;
- (b) Find that the E911 trunks offered in Attachment 5 of the ICA are optional and required only pursuant to the terms and conditions of Attachment 5 if Spirit chooses to use and purchase the E911 Access Services in Attachment 5, and only for so long as Spirit chooses to use and purchase such E911 Access Services;
- (c) Find that the ICA does not prohibit Spirit from accessing AT&T's selective routers through means other than the E911 Access Services in Attachment 5 of the ICA, and accordingly the ICA permits Spirit to access AT&T's selective routers through a third party provider;
- (d) Find that AT&T may not charge Spirit for E911 interconnection facilities that Spirit has requested be disconnected, or that Spirit would have requested be disconnected if AT&T had not rejected Spirit's requests to disconnect E911 trunks;
- (e) Find that AT&T has materially breached the ICA by refusing to disconnect E911 trunks and E911 interconnection facilities that Spirit requested be disconnected;
- (f) Find that AT&T has materially breached the ICA by continuing to charge Spirit for E911 Access Services under Attachment 5 of the ICA;
- (g) Order AT&T to disconnect all E911 trunks and E911 interconnection facilities as requested by Spirit; and
- (h) Order AT&T to reverse all charges for monthly E911 Access Services back to the date on which Spirit initially requested disconnection of the first E911 trunk.

IT IS SO ORDERED

BY ORDER OF THE COMMISSION

Swain E. Whitfield, Chairman

ATTEST:

Comer H. Randall, Vice Chairman

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) CERTIFICATE OF SERVICE

The undersigned, Carrie L. DeVier, hereby certifies that she is employed by the law firm of Herman & Whiteaker, LLC as attorneys for South Carolina Net, Inc. d/b/a Spirit Communications and that she has caused Spirit Communications' Proposed Order in Docket No. 2016-79-C to be served by United States Postal Service, first class postage prepaid and affixed thereto, and by email, and addressed to the following on July 20, 2016:

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Carrie L. DeVier

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In Re: Complaint and Petition for Relief)	
Of South Carolina Net, Inc. d/b/a Spirit)	
Communications v. BellSouth)	Docket No. 2016-79-C
Telecommunications, LLC d/b/a AT&T)	
South Carolina)	

SPIRIT COMMUNICATIONS' POST-HEARING BRIEF

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South Carolina Net, Inc. d/b/a Spirit Communications (“Spirit”) respectfully submits its post-hearing brief in support of its Complaint against BellSouth Telecommunications, LLC d/b/a AT&T South Carolina (“AT&T”) (collectively Spirit and AT&T are the “Parties”) for breaches of the Parties’ interconnection agreement (“ICA”).

INTRODUCTION AND SUMMARY

The primary question before the Commission is whether the Parties’ ICA requires Spirit to use and purchase the services set forth in Attachment 5 in order to access AT&T’s selective routers. While the specific provisions of the ICA determine the answer to that question, the Commission’s analysis and interpretation of the ICA should be guided by some basic parameters regarding the provision of 911 service from the perspective of the entity having the direct relationship with a Public Safety Answering Point (“PSAP”), all other telecommunications carriers that must send 911 calls to that PSAPS, and the structure of the ICA as it relates to those parties.

Spirit provides the following summary of important aspects related to the provision of 911 service and the relevant structure of the ICA.

Obligations Of An E911 Service Provider

Where AT&T has been selected by a PSAP to route 911 calls and to forward associated Automatic Number Identification (“ANI”) and Automatic Location Identification (“ALI”) to the PSAP (collectively, the routing of 911 calls and forwarding of associated ANI and ALI is the “E911 Service,” which is ordered and purchased by the PSAP and/or the E911 Customer¹), AT&T is the E911 network provider, or “E911 Service Provider,” to the PSAP and/or E911

¹ An E911 Customer is the governmental entity authorized to respond to public emergency telephone calls. See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 2.7).

Customer.² The E911 network that is ordered and purchased by the E911 Customer and/or PSAP is for the facilities and trunks between the PSAP's location and AT&T's selective router. As the E911 Service Provider, AT&T also has an obligation to provide Spirit, an interconnecting telecommunications carrier that has been approved by the PSAP and/or E911 Customer that AT&T serves, with access to the AT&T's selective routers for routing 911 calls to the appropriate PSAP, as well as for transporting the 911 calls and forwarding associated ANI and ALI to those PSAPs.³

All Telecommunications Carriers Must Provide Customers With 911 Service

All telecommunications carriers have an independent obligation to send 911 calls made by their customers to appropriate PSAPs for emergency handling,⁴ but in order to send 911 calls to PSAPs, and specifically to the appropriate PSAPS, the 911 calls must be sent first to the appropriate selective router of the E911 Service Provider for routing and transport. Only an E911 Service Provider has direct access to the PSAPs. Pursuant to the ICA, if a PSAP has approved Spirit to send 911 calls to that PSAP, then AT&T,⁵ as the E911 Service Provider, must

² See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Sections 1.2 and 2.8).

³ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 1.1).

⁴ See 47 U.S.C. § 64.3001. See also Tr. 121.

⁵ When Spirit was initially authorized by the Commission to provide local service and exchange access service, the Commission directed Spirit to contact the appropriate 911 service authorities before operating and providing local service. See *Application of South Carolina Net, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services in Certain Areas of South Carolina Currently Served by BellSouth Telecommunications, Inc. GTE South, Inc. and United Telephone Company of the Carolinas, Inc.*, Order Approving Expedited Review Granting Certificate to Provide Local Exchange Services and Approving Flexible Regulation, Docket No. 2000-0121-C, Order No. 2000-549, July 5, 2000, at p. 10

provide Spirit with access to AT&T's selective routers, as well as route and transport to the appropriate PSAPs the 911 calls that AT&T receives from Spirit at the selective routers.⁶

Premise For Determining A Breach Of The ICA

In the matter before the Commission, AT&T is the E911 Service Provider and it must provide Spirit with access to AT&T's selective routers, route the 911 calls made by Spirit's customers to the appropriate PSAP, and then transport those 911 calls accordingly. The terms and conditions of access to AT&T's selective routers are set forth in Attachment 5 of the ICA.⁷ In deciding whether AT&T has breached the ICA by refusing to disconnect E911 trunks and the E911 interconnection facilities on which the E911 trunks are provisioned, as requested by Spirit, and by continuing to bill Spirit for the services covered in Attachment 5, the Commission must determine whether the ICA requires Spirit to use and purchase the services that AT&T is required to offer, and that AT&T does offer in Attachment 5. In summary, the services offered in Attachment 5 include E911 interconnection facilities from Spirit's switch to AT&T's selective routers and the provisioning of circuits on those facilities to be connected to the E911 trunks that AT&T provides and maintains between its selective routers and the PSAP (collectively, the "E911 Access Services").⁸ If Spirit chooses to use and purchase the E911 Access Services, then the terms of Attachment 5 require that Spirit order a minimum number of E911 trunks *for each PSAP to interconnect to the AT&T selective router*.⁹

⁶ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Sections 1.3, 3.2.1, and 3.2.2).

⁷ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 1.1).

⁸ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Sections 3.3.2, 4.2.3, 4.2.5, and 4.2.6). In addition to access to the selective routers, AT&T also provides call routing and database services under Attachment 5. See generally Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Sections 3.2 and 3.4).

⁹ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 4.2.3).

Ultimately, 911 calls from Spirit's customers that are destined for a PSAP served by AT&T as the E911 Service Provider must be sent to AT&T's selective routers. The question here is whether Spirit is required to use the E911 Access Services set forth in Attachment 5 or whether Spirit has a choice in how it accesses AT&T's selective routers. To determine whether AT&T has breached the ICA, the Commission must first interpret several important provisions of the ICA. Only then can the Commission assess the facts and make a determination.

Network Interconnection Is The Starting Point

The Commission's analysis and interpretation of the ICA must begin with Attachment 2 (ISP – Network Interconnection). Attachment 2 sets forth the terms and conditions for network interconnection, trunking, and intercarrier compensation.¹⁰ Network interconnection is established for the transmission and routing of local exchange traffic and exchange access traffic.¹¹ Importantly, Attachment 2 also sets forth the “*required and optional trunk groups for Section 251(b)(5) Traffic, ISP-Bound Traffic, IntraLATA Toll Traffic, IXC carried Meet Point Traffic, Third Party Traffic, Mass Calling, **E911**, Operator Services and Directory Assistance Traffic.*”¹² More specifically, the interconnection trunking section of Attachment 2 that addresses the provisioning and administration of trunk groups makes clear that “[t]runk groups for ancillary services (e.g., OS/DA, BLVI, High Volume Call In and **E911**) and Meet Point or Third Party (as appropriate) Trunk Groups **can be established** between CLEC's switch and the appropriate AT&T-22STATE Tandem Switch as further provided in this Section 4.0.”¹³

¹⁰ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 1.1).

¹¹ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 1.1.1).

¹² Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 1.1.2) (emphasis added).

¹³ Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.1.2) (emphasis added). Importantly, the language in Section 4.1.2 must be juxtaposed against the language in

AT&T has made clear that there are optional trunk groups for services that it has identified as ancillary.¹⁴ AT&T states that E911 Access Services are ancillary services and therefore E911 trunk groups are optional and can be established.¹⁵ If Spirit chooses to use and purchase the ancillary E911 Access Services, Section 4.3.8.1 of Attachment 2 specifies that the E911 trunk group requirements can be found in Attachment 5 (911/E911).¹⁶ Likewise, AT&T states that OS/DA is an ancillary service and therefore OS/DA trunk groups are optional and can be established.¹⁷ If Spirit chooses to use and purchase the ancillary OS/DA service, Section 4.3.10.1 of Attachment 2 specifies that the trunk group requirements for OS/DA can be found in Attachment 6 (Customer Information Services).¹⁸

The Tail Does Not Wag The Dog

The fact that the ICA includes an attachment setting forth the terms and conditions for E911 Access Services and an attachment setting forth the terms and conditions for OS/DA service does not support an interpretation that these attachments automatically apply to Spirit and therefore determine and govern the relationship between the Parties.¹⁹ Such an interpretation

Section 4.1.1, which addresses trunk groups not qualified by ancillary services, and which states that “*CLEC shall issue ASRs for two-way trunk groups and for one-way trunk groups* originating at CLEC’s switch. AT&T-22STATE shall issue ASRs for one-way trunk groups originating at the AT&T-22STATE switch.” Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.1.1) (emphasis added).

¹⁴ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Sections 1.1.2 and 4.1.2).

¹⁵ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Sections 1.1.2 and 4.1.2). Spirit agrees that E911 Access Services are ancillary services. Tr. 113.

¹⁶ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.3.8.1).

¹⁷ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Sections 1.1.2 and 4.1.2). Spirit agrees that OS/DA is an ancillary service. Tr. 113.

¹⁸ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.3.10.1).

¹⁹ Similarly, the inclusion of the word “wishes” in Attachment 6 for OS/DA service with regard to whether Spirit “wishes to interconnect with AT&T-22STATE’s OS/DA switches,” but

would ignore the fact that AT&T has identified both of these services as ancillary and the trunk groups for these services as optional. The first prong of the Commission's decision must be whether Spirit chose and continues to choose to use and purchase an ancillary service, specifically the ancillary E911 Access Services. If Spirit chooses to use and purchase an ancillary service, then the attachment setting forth the terms and conditions for that service become relevant and operational for as long as Spirit chooses to use and purchase such ancillary service.

Spirit does not use or purchase the ancillary OS/DA service and has not established the optional trunk groups for OS/DA service; accordingly, AT&T does not bill Spirit for OS/DA service.²⁰ Therefore, Attachment 6 is not relevant or operational.²¹ Initially, Spirit used and purchased the ancillary E911 Access Services and established the optional trunk groups for such E911 Access Services as set forth in Attachment 5.²² Attachment 5 was relevant and operational while Spirit chose to use and purchase the ancillary E911 Access Services. However, Spirit has subsequently chosen not to use and purchase the ancillary E911 Access Services and, accordingly, Spirit sought to disconnect the optional E911 trunk groups that it had previously established.²³ Even though AT&T refused to disconnect those optional E911 trunk groups, Spirit no longer sends any 911 calls over the E911 interconnection facilities that Spirit is being billed

not in Attachment 5 for 911/E911 service is also not controlling or conclusive that Spirit can choose to use and purchase OS/DA service in Attachment 6, but is required to use and purchase the E911 Access Services in Attachment 5. Tr. 122-123. Both services are ancillary. The trunk groups for both services are optional. The starting point for evaluating whether Spirit is required to use and purchase either of these services is in Attachment 2 of the ICA, not in the actual attachment where the terms and conditions for the optional, ancillary service are set forth.

²⁰ See Tr. 42, 77, 98, 116-117.

²¹ See Tr. 44, 77.

²² See Tr. 25.

²³ See Tr. 29, 40.

for between Spirit's switch and AT&T's selective routers, and that AT&T will not disconnect, or over the E911 trunks that AT&T provisioned on the E911 interconnection facilities and that AT&T continues to maintain between AT&T's selective routers and a number of PSAPs.²⁴ Effectively, Attachment 5 is no longer relevant or operational except for the fact that AT&T continues to insist that it governs the Parties' relationship.

Spirit Is Meeting Its 911 Obligations Using The Services Of Bandwidth.com

Spirit has chosen to no longer use the E911 Access Services offered by AT&T in Attachment 5. Spirit no longer sends the 911 calls from its customers to PSAPs using the AT&T E911 interconnection facilities or E911 trunks that were originally put in place pursuant to Attachment 5.²⁵ Still, Spirit is complying with the obligation to provide 911 service to its customers, and Spirit meets this obligation by sending all 911 calls from its customers to Bandwidth.com, Inc. ("Bandwidth") for further routing to selective routers and PSAPs across the State of South Carolina.²⁶ Bandwidth has an interconnection agreement with AT&T;²⁷ Bandwidth has the appropriate E911 interconnection facilities in place to connect to AT&T's selective routers; Bandwidth has the appropriate number of E911 trunks provisioned for those

²⁴ See Tr. 45, 92, 122.

²⁵ See Tr. 45, 92, 122.

²⁶ Indeed, Spirit no longer uses the E911 interconnection facilities or E911 trunks of any other E911 Service Provider serving PSAPs other than those served by AT&T for routing and sending 911 calls to appropriate PSAPs across the state. See Tr. 40-41. All 911 calls from Spirit's customers are sent first to Bandwidth, which then routes those calls to the appropriate selective routers and PSAPs across the state. Tr. 29, 44-45, 53, 59-62. Interestingly, no other entity that has been selected as an E911 Service Provider in the State of South Carolina has objected to Spirit's termination of any existing E911 interconnection facilities and E911 trunks and Spirit's substitution of the services of Bandwidth for accessing the selective routers. See Tr. 40-41. Even though all interconnection agreements are not the same, there is nothing in the Parties' ICA that prevents Spirit from terminating E911 interconnection facilities and E911 trunks in place through AT&T's selective routers.

²⁷ See Tr. 199.

interconnection facilities to send Spirit's 911 calls to the appropriate PSAPs where AT&T has been selected as the E911 Service Provider; and there has been no reduction in the quality of Spirit's 911 service to its customers while using the services of Bandwidth to access AT&T's selective routers.²⁸ Attachment 2 of the ICA gives Spirit the choice to use E911 Access Services in Attachment 5 or not. Since Spirit has chosen not to use those Attachment 5 services, Spirit must gain access to the AT&T selective routers through another means, and Spirit has chosen to gain such access through Bandwidth, as a third party provider. Nowhere in the ICA is Spirit prohibited from accessing AT&T's selective routers through a third party provider as a means for Spirit being able to meet its 911 service obligations to its customers.

ARGUMENT

I. AT&T IS BREACHING THE ICA BY REFUSING TO DISCONNECT E911 TRUNKS AS REQUESTED BY SPIRIT.

AT&T has identified E911 Access Services as an ancillary service.²⁹ Equally important, AT&T has not disputed that E911 Access Services are ancillary services and that ancillary services are supplementary services that Spirit has the option to purchase.³⁰ Consistent with the optional nature of ancillary services, Section 4.1.2 of Attachment 2 uses permissive, not mandatory, language when referring to interconnection trunking to be used for these services. Specifically, Section 4.1.2 states "Trunk groups for ancillary services (e.g., OS/DA, BLVI, High Volume Call In and E911) and Meet Point or Third Party (as appropriate) Trunks Groups *can be* established between CLEC's switch and the appropriate AT&T-22STATE Tandem Switch as

²⁸ See Tr. 67-68.

²⁹ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.1.2).

³⁰ See Tr. 43, 52.

further provided in this Section 4.0.”³¹ Even if the permissive language in Section 4.1.2 was not sufficiently clear that trunking for this ancillary service was optional, Section 1.1.2 of Attachment 2 plainly states that there are required trunk groups and there are optional trunk groups.³² E911 Access Services, an ancillary service, is listed as one of the many services for which there may be required or optional trunk groups.³³

When an interconnecting carrier chooses to use and purchase the ancillary E911 Access Services, Section 4.3.8 of Attachment 2 directs the carrier to Attachment 5 for the terms and conditions of E911 Access Services.³⁴ Once an interconnecting carrier is using the E911 Access Services found in Attachment 5, there is no provision in Attachment 5 that prevents that carrier from terminating those services, which would include disconnecting the E911 trunks and E911 interconnection facilities already put in place.

In late 2013, Spirit submitted Access Service Requests (“ASRs”) to AT&T that requested AT&T to disconnect E911 trunks and E911 interconnection facilities that Spirit had previously ordered from AT&T.³⁵ AT&T rejected Spirit’s requests to disconnect E911 trunks,³⁶ and AT&T will not disconnect E911 interconnection facilities until all E911 trunks have been removed from the E911 interconnection facilities.³⁷ AT&T has not disconnected any of the E911 trunks or E911 interconnection facilities that Spirit requested be disconnected.³⁸

³¹ Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Att. 2, Section 4.1.2) (emphasis added).

³² See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 1.1.2).

³³ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 1.1.2).

³⁴ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.3.8).

³⁵ See Tr. 29, 40.

³⁶ See Tr. 54, 71, 78, 122 (Hearing Exhibit 2, McPhee Direct, Attachment B).

³⁷ See Tr. 47, 174, 176, 186, 202-203.

³⁸ See Tr. 29.

AT&T has breached the ICA by refusing to disconnect the optional E911 trunk groups that Spirit no longer uses and that Spirit requested be disconnected. Additionally, AT&T has breached the ICA by refusing to terminate the ancillary E911 Access Services that Spirit no longer uses and that Spirit requested be terminated.

II. AT&T IS BREACHING THE ICA BY CONTINUING TO CHARGE SPIRIT FOR E911 ACCESS SERVICES THAT SPIRIT HAS REQUESTED BE DISCONNECTED AND THAT SPIRIT IS NO LONGER USING.

E911 trunks are optional.³⁹ E911 interconnection facilities are offered as part of an ancillary service⁴⁰. Spirit has requested that AT&T disconnect the E911 trunks and E911 interconnection facilities that it no longer uses. AT&T has refused to disconnect the E911 trunks as requested by Spirit. AT&T will not disconnect the E911 interconnection facilities until Spirit disconnects (or re-homes) the existing E911 trunks to other E911 interconnection facilities.⁴¹ However, there is no reason to re-home the E911 trunks because Spirit not sending any 911 calls to AT&T's selective routers over the E911 interconnection facilities or to PSAPs over the E911 trunks that AT&T provisioned on the E911 interconnection facilities.⁴² Rather, Spirit uses the E911 interconnection facilities and E911 trunks that Bandwidth has in place with AT&T for sending all 911 calls to PSAPs.⁴³

³⁹ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Sections 1.1.2 and 4.1.2).

⁴⁰ See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 2, Section 4.1.2, and Attachment 5, Section 3.3.2).

⁴¹ See Tr. 47, 174, 176, 186, 202-203.

⁴² Spirit has not sent any 911 calls to PSAPs using AT&T's E911 Access Services since the end of 2013. See Tr. 29, 45, 92, 122.

⁴³ Tr. 29, 44-45, 53, 59-62.

AT&T continues to bill Spirit in the approximate amount of \$4,950 per month for the Attachment 5 E911 Access Services that Spirit previously used until the end of 2013.⁴⁴ AT&T has continued to bill Spirit for these E911 Access Services despite Spirit's requests (which were in the form of ASRs) to disconnect E911 trunks and E911 interconnection facilities in late 2013. While AT&T has repeatedly stated that it does not charge Spirit for E911 trunks,⁴⁵ AT&T will

⁴⁴ See Tr. 21, 30, 33.

⁴⁵ See Tr. 135, 146.

Indeed, upon a closer read of the provisions in Attachment 5 of the ICA, there is no reason to think that AT&T could charge Spirit for E911 trunks.

Specifically, Attachment 5 does not say that AT&T provides Spirit with E911 trunks. Rather, Attachment 5 states that AT&T will "provide and maintain sufficient dedicated E911 Trunks from AT&T-22STATE's E911 SR [Selective Router] to the PSAP of the E911 Customer [the government entity responsible for handling 911 emergency services] according to the provisions of the appropriate state Commission-approved tariff and documented specifications of the E911 Customer." Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 3.3.1).

Spirit is responsible for ordering "a minimum of two (2) one-way outgoing E911 Trunk(s) dedicated for originating 911 Emergency Service calls *for each default PSAP* or default ESN *to interconnect to each appropriate AT&T- 22STATE E911 SR [Selective Router]*." Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 4.2.3) Spirit is also responsible for ordering sufficient trunking to handle originating 911 calls. Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 4.2.6). The E911 trunks that Spirit orders under Attachment 5 are between AT&T's selective router and the PSAP.

The E911 interconnection facilities that Spirit puts in place pursuant to Attachment 5 are between Spirit's switch and AT&T's selective router. At the selective router, AT&T provisions the circuits that Spirit identifies on the E911 interconnection facility as designated for 911 traffic. That provisioning includes connecting the circuits on that interconnection facility to the E911 trunks that Spirit has ordered to be put in place between AT&T's selective router and the PSAP. See Tr. 146.

Spirit and other interconnecting carriers are only able to access AT&T's selective routers after the PSAP and/or E911 Customer served by the selective router has approved these carriers to carry 911 calls. See Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 1.3). It is likely that one reason the PSAP must approve the carrier sending 911 traffic to the PSAP is because the PSAP wants to know how many E911 trunks each interconnecting carrier will put in place for sending 911 calls to the PSAP. The total number of E911 trunks from all interconnecting carriers will determine the size and number of interconnection facilities that the PSAP and/or E911 Customer will need to order and have in place between its office and AT&T's selective routers in order to handle an expected number of 911 calls.

not disconnect the E911 interconnection facilities and stop charging for those services until the E911 trunks are re-homed elsewhere.⁴⁶ AT&T continues to charge Spirit for E911 Access Services, specifically for E911 interconnection facilities, even though Spirit has sought to terminate its use of the ancillary E911 Access Services, including the optional E911 trunks. Spirit has not paid for the E911 Access Services since it began requesting disconnection of the E911 trunks and E911 interconnection facilities, and AT&T has not taken any action to obtain payment for these services.⁴⁷

III. SPIRIT IS ENTITLED TO RELIEF FROM AT&T'S BREACHES OF THE ICA.

As remedies for AT&T's breaches of the ICA, and to prevent further harm from continued breaches, Spirit asks the Commission to make the following findings and grant the following relief:

- (a) Find that the E911 Access Services offered in Attachment 5 of the ICA are ancillary services that Spirit may choose to use and purchase and that Spirit may choose to discontinue at any time;
- (b) Find that the E911 trunks offered in Attachment 5 of the ICA are optional and required only pursuant to the terms and conditions of Attachment 5 if Spirit chooses to use and purchase the E911 Access Services in Attachment 5, and only for so long as Spirit chooses to use and purchase such E911 Access Services;

It remains a mystery why AT&T will not allow Spirit to disconnect E911 trunks that Spirit no longer needs to remain in place between AT&T's selective routers and the associated PSAPs, especially when Bandwidth has already ordered a sufficient number of E911 trunks between AT&T's selective routers and the associated PSAPs under Bandwidth's own interconnection agreement with AT&T to handle 911 calls from Spirit's customers.

⁴⁶ See Tr. 174, 176, 186, 202-203.

⁴⁷ See Tr. 200-201.

- (c) Find that the ICA does not prohibit Spirit from accessing AT&T's selective routers through means other than the E911 Access Services in Attachment 5 of the ICA, and, accordingly, that the ICA permits Spirit to access AT&T's selective routers through a third party provider;
- (d) Find that AT&T may not charge Spirit for E911 interconnection facilities that Spirit has requested be disconnected, or that Spirit would have requested be disconnected if AT&T had not rejected Spirit's requests to disconnect E911 trunks;
- (e) Find that AT&T has materially breached the ICA by refusing to disconnect E911 trunks and E911 interconnection facilities that Spirit requested be disconnected;
- (f) Find that AT&T has materially breached the ICA by continuing to charge Spirit for E911 Access Services under Attachment 5 of the ICA;
- (g) Order AT&T to disconnect all E911 trunks and E911 interconnection facilities as requested by Spirit; and
- (h) Order AT&T to reverse all charges for monthly E911 Access Services back to the date on which Spirit initially requested disconnection of the first E911 trunk.

IV. POLICY CONSIDERATIONS.

Although Spirit asks the Commission to decide whether or not a breach of contract has occurred, the Commission should not ignore important policy considerations related to its decision. Among these policy considerations are the following:

- (a) Competitive Access. The Commission should ensure that all telecommunications carriers have competitive access to the selective routers of the E911 network provider that serves the PSAPs. Spirit maintains that the Parties' ICA allows such competitive

access through Attachment 2, which identified E911 Access Services as ancillary services and E911 trunk groups as optional.

- (b) Efficiency. The Commission should ensure that the E911 network, and access to the E911 selective routers and the E911 network, is efficient. Competitive access to the selective routers of the E911 network provider is one way to promote efficiencies. Ensuring that carriers can disconnect facilities and trunks that are not needed, thereby eliminating redundant facilities and trunks, when a competitive choice is made is another way to promote efficiencies.
- (c) Innovation and Advancement. The Commission should ensure that the E911 network continues to innovate and advance. Competition has helped spur the development and implementation of next generation Internet Protocol-based E911 services. Indeed, Spirit's decision to use the services of Bandwidth.com were rooted in IP functionality and capabilities of Bandwidth.com's network, as well as Bandwidth.com's ability to meet recent federal requirements related to the Voice over Internet Protocol ("VoIP") service that Spirit offers. Specifically, Bandwidth.com had tools in place for Spirit to comply with the federal requirement to update a VoIP customer's address if that customer moves its phone to a new location⁴⁸ at a time when AT&T did not offer that capability.
- (d) Benefits to Consumers. Ensuring competitive access, network efficiencies, and innovation in services benefits consumers in both better quality services, but also lower service rates. However, allowing inefficient networks to remain in place only encourages reliance on a revenue stream that is not justified.

⁴⁸ See 47 U.S.C. § 9.5 (d).

CONCLUSION

The matter before the Commission is plainly about contract interpretation and enforcement. However, the Commission's decision in interpreting the ICA is also relevant and important as a public policy matter.

The ICA provides Spirit, and other interconnecting carriers with similar interconnection agreements with AT&T, with the choice to access AT&T's selective routers through competitive and more efficient means, if they exist, because Attachment 2 of the ICA identifies E911 Access Services as ancillary services and states that E911 trunks are optional. For too long, however, AT&T has insisted that Spirit and other interconnecting carriers must use and purchase the E911 Access Services in Attachment 5 of the ICA, contrary to the permissive language in Attachment 2, and also contrary to the introductory provisions of Attachment 5 that state that "[a]ccess to AT&T-22STATE's E911 Selective Routers and E911 Database Management System will be by mutual agreement between the Parties."⁴⁹

Even when Spirit did what the ICA permits, specifically start sending 911 calls to a third party provider for routing to the AT&T selective routers and stop sending any 911 calls over the E911 interconnection facilities or E911 trunks ordered under Attachment 5, despite AT&T's refusal to disconnect those trunks and interconnection facilities, AT&T has continued to bill Spirit for E911 Access Services that Spirit is not using. Yet, AT&T has not attempted to collect for the E911 Access Services that Spirit has not paid for over two years. Perhaps that is the greatest unrecognized admission before the Commission. If AT&T is not attempting to collect over two years of unpaid E911 Access Services, then perhaps AT&T already knows that it

⁴⁹ Tr. 9 (Hearing Exhibit 1, Exhibit MDB-1, ICA, Attachment 5, Section 1.2).

should not be billing Spirit for services that Spirit does not use and that Spirit requested be disconnected.

It is time for the Commission to require AT&T to allow Spirit and other carriers to benefit from the choice the ICA already provides. Choice encourages network efficiencies, minimizes carrier costs and ultimately end user costs, promotes advances in 911 services, encourages PSAP migration to IP networks, and helps ensure that 911 services are reliable. Most importantly, all of these things benefit consumers.

Respectfully submitted this 20th day of July, 2016.

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STATE OF SOUTH CAROLINA)
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COUNTY OF RICHLAND) CERTIFICATE OF SERVICE

The undersigned, Carrie L. DeVier, hereby certifies that she is employed by the law firm of Herman & Whiteaker, LLC as attorneys for South Carolina Net, Inc. d/b/a Spirit Communications and that she has caused Spirit Communications' Post Hearing Brief in Docket No. 2016-79-C to be served by United States Postal Service, first class postage prepaid and affixed thereto, and by email, and addressed to the following on July 20, 2016:

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